

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1110 OF 2004

Smt.Pramila Bhagwant Surve & others ... Appellants.
Versus.
Dhondiram Ramchandra Dabholkar & ors. ... Respondents.

Shri V.C.Ghosalkar for the Appellants.

Ms.Seema Sarnaik for Respondents Nos.1A to 1F, 9 to 12,
14 to 17, and 19 to 22.

CORAM : ABHAY S. OKA, J.

DATED : 31st March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. The Appeal is by the original Defendants in suit filed by the Respondents Nos.1.1 to 1.6. The suit filed by the Respondent No.1.1 to 1.6 is on the basis of the notice of termination of tenancy dated 4th August 1986 under section 106 of the Transfer of Property Act, 1882. The trial Court partly decreed the suit by rejecting the prayer for possession. The trial Court held that the notice of termination of tenancy was bad-in-law inasmuch as it was not issued by all the co-owners. In an appeal preferred by the Respondent No.1.1 to 1.6 to the District Court, the decree of the trial Court has been modified and the decree for possession has been passed.

2. The learned Counsel appearing for the Appellants submitted that the suit notice was not exhibited on the

record of the suit and therefore, no decree could have been passed in favour of the original Plaintiffs. He submitted that the foundation of the suit was the notice of termination issued under section 106 of the said Act of 1882. He submitted that the notice was not issued by all co-owners and it was only issued by the Respondent No.1 and therefore, notice is bad-in-law. He submitted that the Appellants were ready and willing to pay the rent and the rent was not accepted by the original Plaintiffs and therefore, decree for possession could not have been passed. The learned Counsel appearing for the Respondent No.1 has supported the impugned Judgment and Decree.

3. I have considered the submissions of the learned Counsel appearing for the Appellants. It is not in dispute that the suit notice was received by the Appellants and in fact a reply was issued by the Appellants to the said notice. It is also not in dispute that notice was of termination of tenancy under section 106 of the said Act of 1882. The cause of action for instituting the suit was the determination of tenancy of the Appellants in accordance with section 111 of the said Act of 1882. Section 111 lays down that a lease of immoveable property stands determined in contingencies referred to in the said section. Clause (h) of section 111 deals with the determination on expiration of notice to determine the lease. Thus the

cause of action for filing the suit was complete on determination of the lease which was admittedly made by the original Plaintiffs. As the suit is based on determination of lease to which section 111 of the said Act of 1882 is attracted the fact that the suit notice is not exhibited will not be fatal to the case of the original Plaintiffs.

4. In so far as the failure to issue notice by all co-owners is concerned, it is to be noted here that the notice is issued admittedly by one of the co-owners. The Appellate Court has placed reliance on the Judgment of the Delhi High Court reported in AIR 2002 Delhi page 81 which is based on a decision of the Apex court. The position of law is well settled. A co-owner can always lawfully issue notice of termination of tenancy and file a suit for eviction of the tenant. The Appellate Court has upset the Judgment of the trial Court by holding that the termination notice issued by one co-owner is always on behalf of the other co-owners. Therefore, there is no merit in the second contention raised by the Appellants.

5. As stated earlier the suit is based on termination of tenancy under section 111 of the said Act of 1882. The alleged tender of rent by the Appellants to one of the co-owners will not help the Appellants. The Appellant is not seeking a relief against forfeiture

under section 114 of the said Act of 1882. If the Appellant was not seeking to invoke section 114 of the said Act of 1882, the tender of rent is of no consequence. In this view of the matter no substantial question of law arises in this Second Appeal and the same is dismissed with no order as to costs.

6. At this stage the learned Counsel for the Appellants prays that the execution of the decree for possession be stayed for a period of six weeks from today. The said request is opposed by the learned Counsel appearing for the Respondents Nos.1, 2 to 9 and 11 to 14. Considering the facts and circumstances of the case, notwithstanding the dismissal of the Second Appeal, it is directed that the decree for possession shall not be executed for a period of six weeks from today.

Judge.